

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARTIN HAGOPIAN,

Plaintiff,

CIVIL ACTION NO. 05-CV-74025-DT

vs.

DISTRICT JUDGE GEORGE CARAM STEEH

DAVID SMITH,  
et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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**REPORT AND RECOMMENDATION**

I. **RECOMMENDATION:** This Court recommends that Defendant Bureau of Health Care Services Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) (docket nos. 62, 64) be **GRANTED**.

II. **REPORT:**

A. *Procedural History*

This is a prisoner civil rights action under 42 U.S.C. § 1983. (Docket no. 1). This matter comes before the Court on Defendant Bureau of Health Care Services Motion to Dismiss and Amended Motion to Dismiss filed on September 4 and 5, 2007, respectively. (Docket nos. 62, 64). Defendant moves to dismiss based on Eleventh Amendment immunity. Plaintiff has responded to this Motion and states that he “consents with Defendant Bureau of Health Care Services to dismiss them as a Defendant” in this action. (Docket no. 73 at 2). All pretrial matters have been referred to the undersigned for consideration. (Docket no. 11). This matter is now ready for ruling.

B. *Standard of Review*

Dismissal under Fed. R. Civ. P. 12(b)(6) is appropriate when it is clear that no relief could be granted under any set of facts that could be proved consistent with Plaintiff’s allegations. *Morgan v.*

*Church's Fried Chicken*, 829 F.2d 10, 12 (6<sup>th</sup> Cir. 1987). In considering this motion, the Court must accept as true the well-pleaded factual allegations in Plaintiff's complaint. *Id.* The Court does not have to accept as true legal conclusions or unwarranted factual inferences, however. *Id.*

C. *Analysis*

Defendant Bureau of Health Care Services moves to dismiss all claims against it based on Eleventh Amendment immunity. As a part of the Michigan Department of Corrections, the Bureau of Health Care Services is protected by such immunity. *Wichert v. Caruso*, 2007 WL 2904053 (W.D. Mich. Oct. 2, 2007). Moreover, Plaintiff consents to this dismissal. (Docket no. 73). Accordingly, the Bureau's Motion to Dismiss should be granted, and this action should be dismissed as to it.

**III. NOTICE TO PARTIES REGARDING OBJECTIONS:**

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6<sup>th</sup> Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6<sup>th</sup> Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6<sup>th</sup> Cir. 1991); *Smith v. Detroit Fed'n Of Teachers Local 231*, 829 F.2d 1370, 1373 (6<sup>th</sup> Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Any objections must be labeled as "Objection #1," "Objection #2," etc. Any objection must recite *precisely* the provision of this Report and Recommendation to which it pertains. Not later than ten days after service of an objection, the opposing party must file a concise response proportionate to the

objections in length and complexity. The response must specifically address each issue raised in the objections, in the same order and labeled as “Response to Objection #1,” “Response to Objection #2,” etc.

Dated: October 11, 2007

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

**PROOF OF SERVICE**

I hereby certify that a copy of this Report and Recommendation was served up Martin Hagopian and Counsel of Record on this date.

Dated: October 11, 2007

s/ Lisa C. Bartlett  
Courtroom Deputy